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IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFREY A. HOWELL and SHELLEY H.K.
HOWELL,

Case No. C 07-06086 MMC

Plaintiffs,

VS.

KENNETH VITORELO, individually and in his capacity as a San Carlos Building Inspector; JACK AIELLO, individually and in his capacity as the San Carlos Building Official; CITY OF SAN CARLOS,

JOINT CASE MANAGEMENT STATEMENT

Date: March 14, 2008

Time: 10:30 a.m.

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Defendants.

The parties in the above-entitled action jointly submit Case Management Statement and request that the Court adopt it as its Case Management Order in this case.

1. Jurisdiction and Service

Plaintiffs' claim arises under 42 U.S.C. § 1983. Jurisdiction arises under 28 U.S.C. §§ 1331 and 1333. Venue is proper in the Northern District of California. All parties have been served.

1 2. Facts

2 Plaintiffs Jeffrey Howell and Shelley H.K. Howell (“Plaintiffs” or “Mr. and Mrs. Howell”)
 3 reside at 1350 Woodland Avenue, San Carlos, California (“residence”). Defendant Ken Vitorelo
 4 (“Vitorelo”) is a Building Inspector for the Defendant City of San Carlos (“City”). Defendant Jack
 5 Aiello (“Aiello”) was the City’s Building Official. He recently retired from the City.

6 Plaintiffs purchased the residence in October 2005, and Pacific Gas and Electric required
 7 that a new furnace be installed before they would agree to re-establish gas and electric service to
 8 the residence. On or about November 21, 2005, Mr. Howell, through his contractor, Valley
 9 Heating and Plumbing, applied for and obtained a Building Permit from the City of San Carlos to
 10 replace the furnace located in the attic of the garage (Building Permit No. BLD2005-01864).

11 After the work was performed, the City was called to the residence to inspect the furnace
 12 installation on December 13, 2005. The events that transpired during and subsequent to the
 13 December 13, 2005 inspection are the subject of the instant dispute.

14 Plaintiffs contend that Vitorelo exceeded the scope of any authorized inspection, invaded
 15 Plaintiffs’ privacy, and applied the building codes in an unreasonable, discriminatory, and
 16 retaliatory manner. Defendants contend that Vitorelo’s actions were fair, reasonable and not
 17 discriminatory or retaliatory. Plaintiffs further contend that the City engaged in retaliatory
 18 behaviors in response to Plaintiffs’ complaints. Defendants contend that their actions were in
 19 response to Plaintiff’s failure to abide by the applicable building codes and that there was no
 20 retaliation. Finally, Plaintiffs contend that the City failed to follow the processes defined by the
 21 San Carlos Municipal Code for adequate notice and appeal of Building Department conclusions
 22 and/or abatement of a public nuisance. As a result, Plaintiffs contend that their 14th Amendment
 23 Procedural Due Process rights were violated. Defendants dispute these allegations and contend
 24 that their actions were in conformance with its laws and the Constitution.

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1 **3. Legal Issues**

2 * Whether defendants' actions violated plaintiffs' First, Fourth Amendment or
 3 Fourteenth Amendment (Due Process and Equal Protection) rights.
 4 * Whether defendants Vitorelo and Aiello are entitled to qualified immunity.
 5 * Whether the actions of defendants are protected by state law discretionary immunity
 6 and the immunities set forth in California Government Code §§ 810 - 1000.
 7 * Whether the City has any liability under Monell.
 8 * Whether any of the defendants were the legal cause of plaintiffs' claimed damages.
 9 * Whether Plaintiffs or Defendants are entitled to attorneys fees and costs pursuant to
 10 42 U.S.C. § 1988 and/or whether Defendants are entitled to recover their costs and attorneys fees
 11 pursuant to California Code of Civil Procedure §§ 1021.7 and 1038.

12 **4. Motions**

13 There have been no motions filed to date. Defendants anticipate filing a Motion for
 14 Summary Judgment once they have completed written discovery and plaintiffs' depositions.
 15 Plaintiffs may decide to file a Motion for Partial Summary Judgment, if mediation is unsuccessful
 16 and once they have completed their discovery.

17 **5. Amendment of Pleadings**

18 Plaintiffs' complaint was filed prior to any notice of Defendants' public nuisance action in
 19 the San Mateo Superior Court. Accordingly, Plaintiffs will seek to amend their complaint to
 20 request damages, in addition to declaratory and injunctive relief, for the Due Process and Equal
 21 Protection violations under the 14th Amendment.

22 **6. Evidence Preservation**

23 Plaintiffs have requested and continue to request that Defendants immediately undertake all
 24 reasonable efforts to identify and retain all relevant evidence, not merely "their Building Permit
 25 file," relating to their claims. This effort should include the identification and retention of all
 26 electronic data, such as internal emails contained in the computer files of the individual Defendants

1 or contained elsewhere, such as in storage locations in on site or offsite servers. Defendants will
2 preserve all relevant evidence, including the Building Permit file.

3 **7. Disclosures**

4 Defendants contend that they have fully complied with the initial disclosure requirements of
5 FRCP 26. Plaintiffs do not concede that Defendants have done so. In any event, the parties have
6 “met to arrange for the disclosures required by subdivision (a)(1)” of FRCP 26 (f) and have agreed
7 that their disclosures will be served in writing and will consist of: (1) a list of each disclosed
8 document by its date, document title or description and Bates number(s) for its page(s) and (2) a
9 clear and complete copy of each such document with each of its pages Bates numbered.

10 **8. Discovery**

11 No discovery has been propounded to date. Defendants will serve initial written discovery
12 on Plaintiffs to be followed up with the deposition of Plaintiffs and any relevant eyewitnesses.

13 **9. Class Actions**

14 N/A

15 **10. Related Cases**

16 On November 28, 2007, the City of San Carlos filed a Complaint for Injunctive Relief and
17 Abatement of a Public Nuisance against Jeffrey Howell in San Mateo Superior Court (Case No.
18 CIV468042). That case is scheduled for its initial case management conference on April 17, 2008.
19 No trial date has been set in that action.

20 **11. Relief**

21 Plaintiffs are seeking injunctive relief, compensatory and punitive damages and their costs
22 and attorney fees. Defendants will be seeking their costs and attorney's fees.

23 **12. Settlement and ADR**

24 The parties have agreed and the Court has ordered the parties to mediate before the
25 Honorable (Ret.) Gene McDonald. That mediation is in the process of being scheduled, and the
26 parties anticipate that it will commence and be completed within the next 70 days.

1 **13. Consent to Magistrate Judge for All Purposes**

2 Defendants do not consent to an assignment of this case to a United States Magistrate Judge
3 for trial.

4 **14. Other References**

5 N/A

6 **15. Narrowing of Issues**

7 The parties anticipate that issues may be narrowed after some initial discovery has been
8 conducted and a motion or motions for summary judgment is heard.

9 **16. Expedited Schedule**

10 N/A

11 **17. Scheduling**

12 The parties propose the following schedule for discovery and trial.

13 FRCP 26 (a)(1) Initial Disclosures:	April 14, 2008
14 Non Expert Discovery Cut-off:	August 29, 2008
15 Expert Testimony Disclosure (FRCP 26 (a)(2)(C):	August 29, 2008
16 Contradiction/Rebuttal Expert Disclosure (FRCP 26 (a)(1)(C):	September 26, 2008
17 Expert Discovery Cut-Off:	October 24, 2008
18 Last Day to Hear Discovery or Non Dispositive Motions:	November 21, 2008
19 Last Day to Hear Dispositive Motions:	December 19, 2008
20 Final Pretrial Conference:	February 2, 2009
21 Trial:	February 16, 2009

22 **18. Trial**

23 The parties request a jury trial. Defendants expect that the trial would take 5 days.

24 Plaintiffs expect the trial to take 8 days.

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19. Disclosure of Non-party Interested Entities or Persons

N/A

Date: March 6, 2008

HOWARD ROME MARTIN & RIDLEY LLP

By: /s/ Todd H. Master

Todd H. Master
Attorneys for Defendants

Date: March 6, 2008

By:

Jeffrey Howell, Plaintiff *In Pro Per*

Date: March 6, 2008

By:

Shelley H.K. Howell, Plaintiff *In Pro Per*

CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case and the parties are ordered to comply with this Order. In addition the Court orders:

Dated:

Hon. Maxine M. Chesney
United States District Judge